

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRENCE EDWARD HAMMOCK,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
	:	CIVIL NO. 4:CV-04-1981
	:	
WARDEN JOHN NASH, ET AL.,	:	(Judge McClure)
	:	
Respondents	:	

**ORDER**

December 15, 2005

**Background**

An evidentiary hearing is now scheduled for January 31, 2006 on the remaining claims of the petition for writ of habeas corpus filed by Terrence Hammock, pursuant to 28 U.S.C. § 2241. An attorney has been appointed for Hammock.

Now before the court is respondents' motion to expand the record (Rec. Doc. No. 42, filed November 22, 2005). Although no supporting brief was filed, the reasons for the motion are fully set forth in the motion itself. On December 13, 2005, petitioner filed a reply in opposition to the foregoing motion.

Respondents have moved to expand the record under Rule 7 of the Rules

Governing Section 2254 Cases in the United States District Courts. In accordance with Rule 1(b), this court may apply any or all of the foregoing rules to a petition for a writ of habeas corpus brought under and pursuant to 28 U.S.C. § 2241.

Rule 7 provides in its entirety as follows:

**Rule 7. Expanding the Record**

**(a) In General.** If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated.

**(b) Types of Materials.** The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record.

**(c) Review by the Opposing Party.** The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

The court sees no reason why the motion should not be granted and the record expanded as requested. As respondents have indicated, although the materials proffered in this motion may not obviate the necessity of a hearing, the expansion of the record may expedite the disposition of the hearing and avoid unfair surprise. Therefore, the record will be expanded to include the two proffered affidavits attached to the motion as exhibits 1 and 2, namely the declaration of Jay Tomlinson, SIS

Technician, and the declaration of Kevin Bittenbender, Discipline Hearing Officer.

The only real dispute is as to whether or not the respondents may submit to the court for *in camera* review the confidential investigative report provided to the Discipline Hearing Officer by SIS Technician Tomlinson. The court believes that the appropriate course of action is to direct the respondents to file the investigative report under seal for *in camera* review. Upon making that review, the court will then determine whether or not it should be provided to petitioner or his counsel, consistent with such direction as is provided by the United States Court of Appeals for the Third Circuit in Henderson v. Carlson, 812 F.2d 874 (3d Cir. 1987) and by other applicable law. As the document would be filed of record (although under seal), it will be available for review by the Third Circuit, if necessary, to determine the appropriateness of this court's action.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Respondents' motion to expand the record (Rec. Doc. No. 42, filed November 22, 2005) is granted.
2. The record is expanded to include the declarations of Tomlinson and Bittenbender attached as exhibits to the motion.

3. Respondents are directed to file within ten (10) days under seal for *in camera* review by the court the confidential investigative report of Tomlinson.

4. Upon *in camera* review, the court will determine whether any or all of the investigative report should be provided to petitioner or his counsel for review under Rule 7(c), and whether any or all of the investigative report should be made part of the expanded record.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge